

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:15-cv-1063

ACTION NC, DEMOCRACY NORTH
CAROLINA, NORTH CAROLINA A.
PHILIP RANDOLPH INSTITUTE,
SHERRY DENISE HOLVERSON,
ISABEL NAJERA, and ALEXANDRIA
MARIE LANE,

Plaintiffs,

vs.

KIM WESTBROOK STRACH, *in her*
official capacity as Executive Director of
the North Carolina State Board of
Elections; RICK BRAJER, *in his official*
capacity as Secretary of the North
Carolina Department of Health and
Human Services; KELLY THOMAS, *in his*
official capacity as Commissioner of the
North Carolina Division of Motor Vehicles,
and NICK TENNYSON, *in his official*
capacity as Secretary of the North
Carolina Department of Transportation,

Defendants.

MOTION TO DISMISS

NOW COMES Defendant, Defendant KIM WESTBROOK STRACH, in her official capacity as Executive Director of the North Carolina State Board of Elections by and through undersigned counsel, pursuant to Rules 12(b)(1), (2), and (6) of the Federal Rules of Civil Procedure, and moves for the dismissal of Plaintiffs' Complaint for lack of personal jurisdiction, lack of subject matter jurisdiction, failure to state a claim, and

Eleventh Amendment immunity. In support of this Motion, Defendant relies on the Complaint and the detailed arguments and dispositive authorities contained in Defendant's Memorandum of Law filed contemporaneously herewith. Specifically, this Court should dismiss Plaintiffs' claims in their entirety for the following reasons:

1. Individual Plaintiffs each lack standing to maintain this action because each is registered to vote. Plaintiff Holverson's lack of standing in this regard appears on the face of the Complaint. The Declaration of Brian Neesby, appended hereto as Attachment 1, sets forth the facts in support of the lack of standing for Plaintiff Lane and Plaintiff Najera. The Declaration is submitted on the grounds that this Court may consider factual matters apart from the Complaint on a motion to dismiss based on jurisdictional issues. *See Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982); *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999). The fact that each Plaintiff is registered to vote raises both the Eleventh Amendment immunity bar, as well as demonstrates a lack of standing, and claims by these Individual Plaintiffs should be dismissed pursuant to Rule 12(b)(1), and/or Rule 12(b)(2).

2. Individual Plaintiffs each lack standing to maintain a claim based on alleged online deficiencies with the North Carolina Department of Motor Vehicles ("DMV") voter registration services and these claims should be dismissed pursuant to Rule 12(b)(1).

3. Plaintiff Organizations lack standing as to each of their claims: (a) *in-person* transactions under Section 7 of the NVRA; (b) remote/online transactions under

Section 7; (c) *in-person* transactions at DMV under Section 5 of the NVRA; and (d) online transactions through DMV under Section 5 of the NVRA. These claims should be dismissed pursuant to Rule 12(b)(1).

4. Plaintiff Organizations' letter, dated May 8, 2015, was referenced in the Complaint, but not provided. This letter is appended to Defendant's Answer. The insufficiency of this letter raises the Eleventh Amendment immunity bar as discussed in the accompanying Memorandum In Support of Motion to Dismiss and subjects Plaintiff Organizations' claims brought under Section 7 of the NVRA to dismissal pursuant to Rule 12(b)(1), or alternatively, pursuant to Rule 12(b)(2) or Rule (12)(b)(6).

5. Plaintiffs fail to state a claim for relief for claims pertaining to online and remote transactions under Section 5 and Section 7 of the NVRA, as well as fail to state a claim pertaining to third-party contractors under Section 7 of the NVRA. These claims should be dismissed pursuant to Rule 12(b)(6).

This the 17th day of March, 2016.

ROY COOPER
ATTORNEY GENERAL

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North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
(919) 761-6900

CERTIFICATE OF SERVICE

I hereby certify that on 17 March 2016, I electronically filed the foregoing MOTION TO DISMISS with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to:

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Allison J. Riggs
Southern Coalition for Social Justice
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Durham NC 27707

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This the 17th day of March, 2016.

/s/ Lauren M. Clemmons
Lauren M. Clemmons
Special Deputy Attorney General

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the North Carolina State Board of)
Elections; RICK BRAJER, *in his official*)
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Carolina Department of Health and)
Human Services; KELLY THOMAS, *in*)
his official capacity as Commissioner of)
the North Carolina Division of Motor)
Vehicles, and NICK TENNYSON, *in his*)
official capacity as Secretary of the North)
Carolina Department of Transportation,)

Defendants.)

**DECLARATION OF
BRIAN NEESBY**

NOW COMES Brian Neesby, who under penalty of perjury states as follows:

1. I am over 18 years of age, legally competent to give this declaration and have personal knowledge of the facts set forth in it.

2. I am a Business Systems Analyst at the North Carolina State Board of Elections (“State Board”); I have held this position since October 2014.

3. I have access to business records relating to voter registration that are stored within the Statewide Election Information Management System (“SEIMS”), a suite of databases and applications maintained by and in the custody of the State Board.

4. I am familiar with the SEIMS system and the manner in which the business records of the State Board were generated, which were created in the regular course of business at or near the time of the events recorded and that are based upon the personal knowledge of the election official making the record.

5. In the course of performing my day-to-day duties as Business Systems Analyst, I regularly review voter registration records maintained in the SEIMS system.

6. Certain SEIMS registration data is accessible via a public voter lookup web application (“Voter Lookup”).

7. I have reviewed SEIMS registration records for Sherry Denise Holverson, Isabel Najera, and Alexandria Marie Lane.

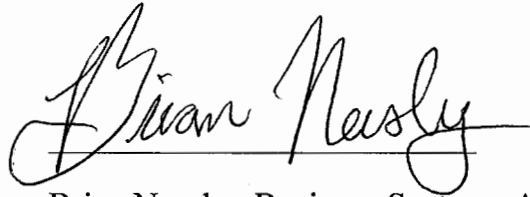
8. Voter registration records indicate that Sherry Denise Holverson is currently registered to vote in Cumberland County. See the attached screenshot from the Voter Lookup (Exhibit 1).

9. Voter registration records indicate that Isabel Najera is currently registered to vote in Sampson County. See the attached screenshot from the Voter Lookup (Exhibit 2).

10. Voter registration records indicate that Alexandria Marie Lane is currently registered in Wake County. See the attached screenshot from the Voter Lookup (Exhibit 3)

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of March, 2016.

A handwritten signature in black ink, reading "Brian Neesby". The signature is written in a cursive style with a horizontal line underneath the name.

Brian Neesby, Business Systems Analyst
North Carolina State Board of Elections

NC Public Voter Information

[New Search](#)

Voter Details

SHERRY DENISE HOLVERSON
1142 CHRISTINA ST
FAYETTEVILLE, NC 28314

County: CUMBERLAND
Status: ACTIVE
Voter Reg Num: 000166123020
NCID: BE320922
Party: DEM
Race: BLACK or AFRICAN AMERICAN
Ethnicity: NOT HISPANIC or NOT LATINO
Gender: FEMALE
Registration Date: 10/05/2015
NCDMV Customer: Yes

Jurisdictions

Precinct: LAKE RIM
VTD: LR63
Congress: CONGRESSIONAL DISTRICT 4
NC Senate: NC SENATE DISTRICT 21
NC House: NC HOUSE DISTRICT 42
Superior Court: 12B SUPERIOR COURT
Judicial: 12TH JUDICIAL
Prosecutorial: 12TH PROSECUTORIAL
County Commissioner: COMMISSIONER #2
Municipality: FAYETTEVILLE
Ward: 8TH
School: SCHOOL #2

Election Day Polling Place

[CITY OF FAYETTEVILLE FIRE STATION #11](#)
7690 RAEFORD RD
FAYETTEVILLE, NC 28314

☐ Sample Ballots

Election	Ballot(s)
3/15/2016 PRIMARY	D018
6/7/2016 PRIMARY	Ballots not assigned yet.
11/8/2016 GENERAL	Ballots not assigned yet.

☐ Voter History (5)

Election	Voted Method	Voted County	Voted Party
05/06/2014 PRIMARY	ABS-1STOP	CUMBERLAND	DEMOCRATIC
11/06/2012 GENERAL	ABS-1STOP	CUMBERLAND	
05/08/2012 PRIMARY	IN-PERSON	CUMBERLAND	DEMOCRATIC
11/08/2011 MUNICIPAL	IN-PERSON	CUMBERLAND	
11/02/2010 GENERAL	IN-PERSON	CUMBERLAND	

☐ Absentee Request (1)

EXHIBIT 1

NC Public Voter Information

[New Search](#)

Voter Details

ISABEL NAJERA
314 BUBBA GUMP LN
SALEMBURG, NC 28385

County: SAMPSON
Status: ACTIVE
Voter Reg Num: 000001097620
NCID: DX61655

Party: UNA
Race: WHITE
Ethnicity: HISPANIC or LATINO
Gender: FEMALE
Registration Date: 10/29/2014
NCDMV Customer: Yes

Jurisdictions

Precinct: LAKEWOOD
VTD: LAKE
Congress: CONGRESSIONAL DISTRICT 7
NC Senate: NC SENATE DISTRICT 10
NC House: NC HOUSE DISTRICT 22
Superior Court: 4A SUPERIOR COURT
Judicial: 4TH JUDICIAL
Prosecutorial: 4TH PROSECUTORIAL
County Commissioner: COMMISSION #4
School: SCHOOL N

Election Day Polling Place

[LAKEWOOD HIGH SCHOOL GYM](#)
245 LAKEWOOD SCHOOL RD
SALEMBURG, NC 28385

☒ **Sample Ballots**

☐ **Voter History (0)**

☒ **Absentee Request (0)**

EXHIBIT 2

NC Public Voter Information

[New Search](#)

Voter Details

ALEXANDRIA MARIE LANE
4349 AVENT FERRY RD # 3
RALEIGH, NC 27606

County: WAKE
Status: ACTIVE
Voter Reg Num: 000100398521
NCID: DE250246
Party: UNA
Race: WHITE
Ethnicity: NOT HISPANIC or NOT LATINO
Gender: FEMALE
Registration Date: 11/04/2014
NCDMV Customer: Yes

Jurisdictions

Precinct: PRECINCT 01-48
VTD: 01-48
Congress: CONGRESSIONAL DISTRICT 4
NC Senate: NC SENATE DISTRICT 16
NC House: NC HOUSE DISTRICT 11
Superior Court: NC SUPERIOR COURT DISTRICT 10A
Judicial: NC JUDICIAL DISTRICT 10
Prosecutorial: 10TH PROSECUTORIAL
County Commissioner: COUNTY COMMISSIONER 4A
Municipality: RALEIGH
Ward: RALEIGH MUNICIPAL DISTRICT D
School: BOARD OF EDUCATION DISTRICT 05

Election Day Polling Place

[WESTERN BOULEVARD PRESBYTERIAN CHURCH](#)
4900 KAPLAN DR
RALEIGH, NC 27606

+ Sample Ballots

- Voter History (4)

<u>Election</u>	<u>Voted Method</u>	<u>Voted County</u>	<u>Voted Party</u>
11/03/2015 MUNICIPAL	IN-PERSON	WAKE	
11/02/2010 GENERAL	ABS-1STOP	ORANGE	
11/03/2009 MUNICIPAL	IN-PERSON	ORANGE	
11/04/2008 GENERAL	IN-PERSON	ORANGE	

+ Absentee Request (0)

EXHIBIT 3